

Haggerty, Nicole@Wildlife



From: Kearns, Zachary@Wildlife
Sent: Thursday, May 4, 2023 1:24 PM
To: gsanfilippo@sjgov.org
Cc: Wildlife R2 CEQA; Haggerty, Nicole@Wildlife; Boyd, Ian@Wildlife; Wilson, Billie@Wildlife; Sheya, Tanya@Wildlife; Thomas, Kevin@Wildlife
Subject: [CDFW Comments] PA-2200142 - Mitigated Negative Declaration (IS/MND)

Hi Mr. Sanfilippo,

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Mitigated Negative Declaration (IS/MND) for the PA-2200142 (SA) (project). CDFW is responding to the IS/MND as a Trustee Agency for fish and wildlife resources (Fish & G. Code, §§ 711.7 & 1802, and CEQA Guidelines, §§ 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for incidental take of endangered, threatened, and/or candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project is located at approximately Latitude: 38.115383, Longitude: -121.389460, in San Joaquin County. The project consists of a Site Approval for a hotel, including a three (3) story, 38,595-square-foot building, and a 575-square-foot storage shed.

CDFW recommends the following items be addressed in the future planning of the project:

1. **Fully Protected Species.** A Fully Protected Species (Fish & G. Code § 4700) has the potential to occur within or adjacent to the project area, including, but not limited to: California Black Rail (*Laterallus jamaicensis coturniculus*) and the White-Tailed Kite (*Elanus leucurus*). Fully protected species may not be taken or possessed at any time. Project activities should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area.
2. **Nesting Birds.** Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

CDFW recommends that nesting bird surveys be conducted if project activities are scheduled to occur between February 1 and August 31, to fully encapsulate the potential nesting season. The survey should take place no more than 15 calendar days prior to ground disturbing activities. CDFW typically recommends a minimum of a 500-foot radius for migrating birds, and a ½ mile radius for nesting raptors.

3. **Moving out of Harm's Way:** The proposed project is anticipated to result in disturbances to natural habitats that support native species. To avoid direct mortality, a qualified biologist who is approved by CDFW to handle western pond turtle (*Emys marmorata*, SSC), or other special status species, may be retained to be onsite prior to and during all project-related activities to move out of harm's way special status species or other wildlife of low or limited mobility, that would otherwise be injured or killed from project-related activities. Movement of

wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety.

Please note, if it is determined the Project may have the potential to result in "take," as defined in the Fish and Game Code, section 86, of a CESA-listed species, then the San Joaquin County Community Development Department (County) should disclose that an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be needed prior to starting construction activities. The IS/MND should include all avoidance and minimization to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures should be proposed to fully mitigate the impacts to CESA-listed species (Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8)). If the County does not pursue CESA authorization and encounters any CESA-listed species during project activities, work should be suspended, and CDFW notified. Work should not re-initiate until the County has consulted with CDFW and can demonstrate compliance with CESA.

4. **Swainson's Hawk.** Swainson's hawk (*Buteo swainsoni*) (SWHA) is a species listed as threatened under CESA and has the potential to occur adjacent to the project area. California Natural Diversity Database (CNDDDB) has records of at least nineteen (19) previous SWHA occurrences within five (5) miles of the project area. Review of aerial imagery also suggests that there may be suitable nesting trees and foraging habitat adjacent to the project site.

The IS/MND states that the applicant will participate in the San Joaquin County Multi-Species Open Space and Habitat Conservation Plan (SJMSCP). However, if plan participation is not an option, CDFW recommends early consultation to attain take authorization under CESA. CDFW recommends that a CESA ITP be obtained if the project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species, either through construction or over the life of the project.

CDFW recommends a qualified biologist conduct a SWHA survey within a minimum 1/2-mile radius around the project area. Surveys should be conducted according to the following the five-period schedule in accordance with the "[Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley \(Swainson's Hawk Tech. Advis. Comm., 5/2000\)](#)":

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If an occupied nest is found and may be impacted by project activities, the project proponent should consult with CDFW and demonstrate compliance with CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA.

5. **Burrowing Owl.** If construction activities are planned in suitable BUOW habitat, a designated biologist(s), approved by CDFW, should conduct a survey for burrowing owl following the methodology described in the [Staff Report on Burrowing Owl Mitigation](#), within 1-2 weeks prior to the start of construction. If BUOW or signs of BUOW presence such as whitewash, feathers, animal dung, etc. are not detected, no further mitigation will be required. If burrowing owls are observed within 500 feet of the project area, the project proponent should develop an Impact Assessment consistent with the Staff Report on Burrowing Owl Mitigation and submit the Impact Assessment to CDFW prior to construction work. The final avoidance and mitigation measures will be

determined in coordination with CDFW, but the Impact Assessment should at a minimum include the following mitigation measure:

- a. Occupied burrows will not be disturbed. If occupied burrows are found, the biologist will ensure active nests are avoided and a no disturbance or destruction buffer be established by a biologist. The buffer shall be kept in place until after the breeding nesting season or biologist confirms the young have fledged, and the nest is no longer active for the season. The extent of these buffers shall be determined by the biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.
6. **Passive Relocation and Entrapment Prevention:** At the end of each workday, an escape ramp should be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. A qualified biologist or construction monitor should survey the project area to ensure wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.
7. **Lake and Streambed Alteration:** Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:
- a. Substantially divert or obstruct the natural flow of any river, stream, or lake;
 - b. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
 - c. Deposit debris, waste or other materials where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

If upon review of an entity's notification, CDFW determines that the project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the environmental document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, or (2) timber harvesting operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the project and recommends that the County address CDFW's comments and concerns in the forthcoming CEQA document. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Zach Kearns, Environmental Scientist at (916) 358-1134 or zachary.kearns@wildlife.ca.gov.

Sincerely,

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